

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,
v. **Case No. 2:14-cr-49(2)**
Judge Gregory L. Frost

JAVIER A. CONTRERAS-MARTINEZ,

Defendant.

ORDER

This matter came on for consideration upon Defendant Motion for Downward Departure Pursuant to 18 U.S.C. § 3553(a) or in the Alternative Pursuant 18 to U.S.C. § 3553(c)(2) (ECF No 52) filed on June 22, 2015.

The Court finds Defendant's Motion to be not well taken and the court **DENIES** the same.

Defendant appeared before this Court on September 4, 2014 for the purposes of sentencing. The Court adopted the Presentence Report without modification. The established total offense level was found to be 23 and the criminal history category was found to be I. The calculations therefore placed Defendant in a 46 month to 57 month sentencing range. The Court thereafter considered the 18 U.S.C. § 3553(a) factors as well as the proposed amendments to the Sentencing Guidelines which had not yet been enacted. The Court then imposed a 30 month sentence which was a variance from the Sentencing Guidelines.

Defendant filed a Pro Se Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(2) (ECF No. 48) on December 17, 2014. That Motion was denied. The Court found that by applying the two-level retroactive guideline to Defendant's case he is still not eligible for a reduction in sentence. Pursuant to § 1B1.10 of the Sentencing Guidelines, a defendant is not eligible for the

application of a retroactive guideline if it does not have the effect of reducing the sentence.

In this new motion, Defendant continues to argue that he should receive a reduction in his guideline calculations. The requested two-level reduction would still not place Defendant in a position according to the Sentencing Guidelines that would be less than the sentence imposed.

Defendant also argues that because he is not a U.S. Citizen he is not eligible to receive “the rewards that is normally given to all Federal inmates as a U.S. Citizen inmate.” The Court agrees that Defendant may not be eligible for certain programs because he is not a United States citizen but that is precisely why this Court sentenced Defendant to a sentence which was much less than the sentence provided for by the Sentencing Guidelines. The Court has already granted Defendant leniency and Defendant will not now be granted additional leniency.

Defendants Motion is **DENIED**.

IT IS SO ORDERED.

/s/ Gregory L. Frost
Gregory L. Frost
United States District Judge